112TH CONGRESS
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HOUSE OF REPRESENTATIVES
REPORT
112–509

TO CLARIFY AUTHORITY GRANTED UNDER THE ACT ENTITLED "AN ACT TO DEFINE THE EXTERIOR BOUNDARY OF THE UINTAH AND OURAY INDIAN RESERVATION IN THE STATE OF UTAH, AND FOR OTHER PURPOSES"

MAY 31, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

REPORT

[To accompany H.R. 4027]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4027) to clarify authority granted under the Act entitled "An Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes", having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4027 is to clarify authority granted under the Act entitled "An Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes".

BACKGROUND AND NEED FOR LEGISLATION

The Uintah and Ouray Indian Reservation, located in northeastern Utah, is the second largest Indian reservation in the country and the homeland for approximately 20,000 Ute Indians. Under the Act of March 11, 1948, (62 Stat. 72, the "Hill Creek Act") Congress added 510,000 acres of public domain known as the "Hill Creek Extension" to the Reservation to protect tribal grazing rights. In making this addition to the Indian Reservation, the United States retained the subsurface rights to lands held in trust for the Tribe, while the State of Utah retained 38,000 acres of land it previously acquired in a checkerboard pattern typical in Western states. The State lands in the Hill Creek Extension are adminis-

tered by SITLA for the benefit of K–12 schools and other State institutions.

In 1955, Congress authorized the State to relinquish its lands in the Hill Creek Extension to the United States for the benefit of the Tribe, in exchange for replacement lands that are mineral in character. The State subsequently sold much of the surface estate in the Hill Creek Extension to the Tribe, while retaining 38,000 of subsurface minerals and the right of ingress and egress to develop them. The State today wants to relinquish to the United States (for the benefit of the Tribe) 18,000 acres of subsurface in the remote, southern (Grand County) portion of the Hill Creek Extension, in exchange for 18,000 acres of subsurface in the northern (Uintah County) area of the Extension.

In 2006, SITLA filed an application with the BLM to perform the exchange pursuant to the 1948 Hill Creek Act and the 1955 amendments. The BLM has refused to process the application, claiming the vague law establishing and amending the Hill Creek Extension does not permit the State to select minerals in the northern part of the Extension. Though the State has come to the opposite legal conclusion, legislation is necessary to effectuate the exchange. The land exchange authorized by H.R. 4027 will increase energy production and job opportunities, benefiting the State's public schools, the Tribe, and the nation. It will also enable the Tribe to consolidate split estates in ecologically sensitive and tribally sacred areas.

H.R. 4027 amends the 1948 Hill Creek Act to authorize an acre-for-acre exchange of subsurface mineral lands within the Hill Creek Extension between the State of Utah and the United States (on behalf of the Ute Tribe). The State-relinquished subsurface estate in the sensitive southern area will be held in trust for the Tribe, while the State-acquired subsurface in the northern area will be leased for oil and gas development.

To resolve concerns over the relative values of the exchange, H.R. 4027 reserves to the federal government and the State of Utah identical overriding financial interests in each other's exchanged lands. Specifically, the bill reserves to the federal government 50 percent of bonus bids and rentals from leasing of the mineral resources obtained by the State under this bill, a 6.25 percent overriding royalty on the gross proceeds of oil and gas production, and a 50 percent overriding royalty on the gross proceeds of production of minerals other than oil and gas, equal to 50 percent of the royalty rate established by the Secretary of the Interior by regulation as of October 1, 2011. The State obtains equal overriding financial interests in that portion of the mineral estate it relinquishes to the United States for the benefit of the Tribe. The overriding interest of each party automatically terminates after 30 years. Neither the U.S. nor the State is obligated to lease its lands based on the overriding interests set forth in this bill.

The lands subject to the exchange authorized by the bill are considered prospective, mostly for natural gas. The Tribe is actively engaged in oil and gas leasing on its Reservation.

On March 20, 2012, the Subcommittee on Indian and Alaska Native Affairs held a hearing on H.R. 4027. Witnesses included an official with the BLM, the Chairwoman of the Ute Tribe, the Director

of SITLA, and the Director of Wilderness Policy for the Wilderness Society.

The Tribe, SITLA, and the Wilderness Society testified in support of H.R. 4027. The BLM testified in support of the goals of the bill, but in opposition to it as written. The Administration was concerned with the bill's termination of the overriding financial interests after 30 years without an obligation to lease. It also wanted authority to raise the federal royalty rate for oil and gas produced on the State's leases. Finally, it pointed out that current federal policy is for land exchanges with the United States to be of equal value.

The Committee concurs in the Tribe's and SITLA's view that H.R. 4027 provides an exchange that is fair to all parties, including the public. The only alternative to address the legitimate concerns of SITLA and the Tribe is to perform impractical, dilatory, and costly appraisals that could frustrate the land exchange, much like such appraisals frustrated certain goals of the Utah Recreational Land Exchange Act of 2009 (Public Law 111–53). As explained by the State, the termination of the overriding federal interest will "avoid burdening each party with a perpetual accounting obligation with respect to lands owned by the other." Moreover, allowing the federal government to unilaterally raise the royalty rate on proceeds from State-leased oil and gas production would unfairly reduce the State's benefits.

COMMITTEE ACTION

H.R. 4027 was introduced on February 14, 2012, by Congressman Jim Matheson (D–UT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs and the Subcommittee on Energy and Mineral Resources. On March 20, 2012, the Subcommittee on Indian and Alaska Native Affairs held a hearing on the bill. On April 25, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Indian and Alaska Native Affairs and the Subcommittee on Energy and Mineral Resources were discharged by unanimous consent. No amendments were offered to the bill and the bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause

3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4027—A bill to clarify authority granted under the act entitled "An act to define the exterior boundary of the Uintah and Ouray Reservation in the state of Utah, and for other purposes"

H.R. 4027 would authorize a conveyance of mineral rights within the Uintah and Ouray Indian Reservation in Utah among the state of Utah's School and Institutional Trust Land Administration (SITLA), the federal government, and the Ute Indian Tribe. SITLA currently owns the *subsurface* mineral rights to approximately 18,000 acres in the Hill Creek Extension of the reservation; however, the *surface* rights to that land are held in trust for the Ute Indian Tribe by the federal government. The legislation would authorize SITLA to relinquish to the Ute Indian Tribe its subsurface mineral rights in exchange for the subsurface rights to about 18,000 acres of other land within the Hill Creek Extension owned by the federal government.

CBO estimates that the legislation would have no significant impact on the federal budget over the 2013–2022 period. Enacting H.R. 4027 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4027 would authorize a transfer of federally owned subsurface mineral rights for an equivalent number of acres of state land. However, the acres transferred may not have the same value because mineral deposits are not evenly spread across all areas. To compensate for such a potential imbalance, H.R. 4027 would preserve the federal government's existing financial rights to the value of any subsurface minerals that are developed on all properties for the next 30 years. Therefore, CBO estimates that enacting the legislation would have no impact on direct spending or revenues over the 2013–2022 period.

H.R. 4027 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Enacting the bill would benefit the tribe and state.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that the legislation would have no significant impact on the federal budget over the 2013–2022 period.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to clarify authority granted under the Act entitled "An Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes".

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

ACT OF MARCH 11, 1948

AN ACT To define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes.

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SEC. 5. In order to further clarify authorizations under this Act, the State of Utah is hereby authorized to relinquish to the United States, for the benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation, State school trust or other State-owned subsurface mineral lands located beneath the surface estate delineated in Public Law 440 (approved March 11, 1948) and south of the border between Grand County, Utah, and Uintah County, Utah, and select in lieu of such relinquished lands, on an acre-for-acre basis, any subsurface mineral lands of the United States located beneath the surface estate delineated in Public Law 440 (approved March 11, 1948) and north of the border between Grand County, Utah, and Uintah County, Utah, subject to the following conditions:

(1) RESERVATION BY UNITED STATES.—The Secretary of the Interior shall reserve an overriding interest in that portion of the mineral estate comprised of minerals subject to leasing under the Mineral Leasing Act (30 U.S.C. 171 et seq) in any mineral lands conveyed to the State.

(2) EXTENT OF OVERRIDING INTEREST.—The overriding interest reserved by the United States under paragraph (1) shall consist of—

(A) 50 percent of any bonus bid or other payment received by the State as consideration for securing any lease or authorization to develop such mineral resources;

(B) 50 percent of any rental or other payments received by the State as consideration for the lease or authorization to develop such mineral resources;

(C) a 6.25 percent overriding royalty on the gross proceeds of oil and gas production under any lease or authorization to develop such oil and gas resources; and

(D) an overriding royalty on the gross proceeds of production of such minerals other than oil and gas, equal to 50 percent of the royalty rate established by the Secretary of the Interior by regulation as of October 1, 2011.

(3) RESERVATION BY STATE OF UTAH.—The State of Utah shall reserve, for the benefit of its State school trust, an overriding interest in that portion of the mineral estate comprised of minerals subject to leasing under the Mineral Leasing Act (30 U.S.C. 181 et seq) in any mineral lands relinquished by the State to the United States.

(4) EXTENT OF OVERRIDING INTEREST.—The overriding interest reserved by the State under paragraph (3) shall consist of—

(A) 50 percent of any bonus bid or other payment received by the United States as consideration for securing any lease or authorization to develop such mineral resources on the relinquished lands;

(B) 50 percent of any rental or other payments received by the United States as consideration for the lease or authorization to develop such mineral resources;

(C) a 6.25 percent overriding royalty on the gross proceeds of oil and gas production under any lease or authorization to develop such oil and gas resources; and

(D) an overriding royalty on the gross proceeds of production of such minerals other than oil and gas, equal to 50 percent of the royalty rate established by the Secretary of the Interior by regulation as of October 1, 2011.

(5) NO OBLIGATION TO LEASE.—Neither the United States nor the State shall be obligated to lease or otherwise develop oil and gas resources in which the other party retains an overriding interest under this section.

(6) COOPERATIVE AGREEMENTS.—The Secretary of the Interior is authorized to enter into cooperative agreements with the State and the Ute Indian Tribe of the Uintah and Ouray Reservation to facilitate the relinquishment and selection of lands to be conveyed under this section, and the administration of the overriding interests reserved hereunder.

(7) TERMINATION.—The overriding interest reserved by the Secretary of the Interior under paragraph (1), and the overriding interest reserved by the State under paragraph (3), shall automatically terminate 30 years after the date of enactment of this section.

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